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8 Attorneys for Plaintiff, j2 GLOBAL COMMUNICATIONS, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 j2 GLOBAL COMMUNICATIONS, INC.,

13 Plaintiff,

14 vs.

15 BLUE JAY, INC., *et al.*,

16 Defendants.

Case No.: ____08-04254 PJH

**DECLARATION OF JOHN C. BROWN
IN SUPPORT OF j2 GLOBAL
COMMUNICATIONS, INC'S.
REQUEST TO CLERK TO ENTER
DEFAULT OF NEIL LUXENBERG**

17
18
19 I, John C. Brown, declare:

20
21 1. I am a competent adult individual person and an attorney at law licensed to practice
22 before the courts of California and this court. I represent the plaintiff, j2 Global Communications,
23 Inc., in the instant legal action.

24 2. I make this declaration of my own personal knowledge and, if called upon to testify,
25 could and would testify competently as stated herein.

26 3. j2 filed its action against Neil Luxenberg and other related defendants in the San
27 Francisco Superior Court on June 3, 2008 and served defendant Neil Luxenberg with the Summons
28 and Complaint on August 8, 2008, as described in the attached Exhibit 1.

1 4. On September 9, 2008, Luxenberg served his Notice of Removal on j2 and removed the
2 action to this Court (docket entry #1). Luxenberg entered his appearance through his attorneys
3 John G. Gherini and Micki S. Singer of Sedgwick Detert Moran & Arnold LLP.

4 5. On September 24, 2008, j2 filed its First Amended Complaint (docket entry #6).

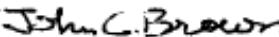
5 6. On October 14, 2008, Luxenberg filed his Motion to Dismiss for Lack of Jurisdiction
6 and Memorandum of Points and Authorities in Support of Same (docket entry #7), setting the
7 motion for hearing on December 3, 2008.

8 7. On January 5, 2009, the Court entered its Order Denying Luxenberg's Motion to
9 Dismiss (document #27), thereby giving notice to Luxenberg of the Order. The Order did not
10 specify a date for the filing by Luxenberg of his Answer or other responsive pleading. On January
11 16, 2009, I advised Luxenberg's counsel by telephone that his responsive pleading was overdue. I
12 advised counsel both by telephone and by the email attached as Exhibit 2 that j2 intended to take a
13 default on January 23, 2009 if Luxenberg had not filed an Answer or responsive pleading as of that
14 date.

15 8. As of January 23, 2009, Luxenberg has not filed an Answer or other responsive pleading
16 to the First Amended Complaint. Nor have I received any request for an extension of time to file
17 from Luxenberg.

18 9. To the best of my knowledge, Luxenberg is neither a minor nor incompetent.
19

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct and executed this 23rd day of January 2009 in San Francisco,
22 California.
23

24 

25 JOHN C. BROWN
26
27
28

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John C. Brown (195804) REDENBACHER & BROWN, L.L.P. 580 California Street, Suite 1600 San Francisco, CA 94101 TELEPHONE NO 415-409-8600 FAX NO (Optional) 415-520-0141 E-MAIL ADDRESS (Optional) jbrown@redbrownlaw.com ATTORNEY FOR (Name) j2 GLOBAL COMMUNICATIONS, INC.	FOR COURT USE ONLY ENDORSED FILED Superior Court of California County of San Francisco AUG 20 2008 GARDON PARK II, Clerk CAROLYN BALISTRERI Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS 400 McAllister Street MAILING ADDRESS CITY AND ZIP CODE San Francisco, CA 94102 BRANCH NAME Unlimited	BY:
PLAINTIFF/PETITIONER: j2 GLOBAL COMMUNICATIONS, INC. DEFENDANT/RESPONDENT: BLUE JAY, INC., et al.	CASE NUMBER CGC 08-475914
PROOF OF SERVICE OF SUMMONS	Ref No. or File No

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☐ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☐ other (specify documents):
3. a. Party served (specify name of party as shown on documents served):
 Neil Luxenberg aka Neil Law
 - b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a)
4. Address where the party was served:
 4057 Delos Drive, Las Vegas, Nevada 89103
5. I served the party (check proper box)
 - a. ☐ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
 - b. ☒ **by substituted service.** On (date): 08/08/2008 at (time): 11:45 a I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 Ricahrd Hudock, co-resident
 - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☒ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☒ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): 08/11/08 from (city): Henderson, NV or ☐ a declaration of mailing is attached.
 - (5) ☒ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: j2 GLOBAL COMMUNICATIONS, INC.	CASE NUMBER CGC 08-475914
DEFENDANT/RESPONDENT: BLUE JAY, INC., et al.	

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): _____ (2) from (city): _____
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☒ as an individual defendant
- b. ☐ as the person sued under the fictitious name of (specify)
- c. ☐ as occupant
- d. ☐ On behalf of (specify):

under the following Code of Civil Procedure section:

- | | |
|--|---|
| <input type="checkbox"/> 416.10 (corporation)
<input type="checkbox"/> 416.20 (defunct corporation)
<input type="checkbox"/> 416.30 (joint stock company/association)
<input type="checkbox"/> 416.40 (association or partnership)
<input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 415.46 (occupant)
<input type="checkbox"/> other: _____ |
|--|---|

7. **Person who served papers**

- a. Name: **Stephen T. Popovich, Southern Nevada Process Service, NV License Number 662**
- b. Address: **9017 S PECOS RD STE 4435, HENDERSON, NV 89074**
- c. Telephone number: **702 319-5300**
- d. **The fee** for service was: **\$ 45.00**
- e. I am

- (1) ☒ not a registered California process server
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b)
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor
- (ii) Registration No.: _____
- (iii) County: _____

8. ☒ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct

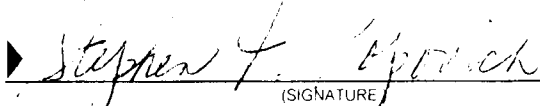
or

9. ☐ **I am a California sheriff or marshal and** I certify that the foregoing is true and correct.

Date: **08/13/2008**

Stephen T. Popovich

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


 (SIGNATURE)

I, STEPHEN T. POPOVICH, Declare: That at all times herein declarant was over 18 years of Age, licensed to serve civil process in the State of Nevada under license number 662, not a party to or interested in the proceeding in which this affidavit is made. That Affiant received the SUMMONS; NOTICE; COMPLAINT; and ALTERNATIVE DISPUTE RESOLUTION on the 1st day of August, 2008 and attempted to serve the same by delivering a copy to the Defendant, Neil Luxenberg aka Neil Law at 4057 Delos Drive, Las Vegas, Nevada 89103, a residence with the following results:

08/04/2008, 3:20 p.m. No answer. Gate locked - can't get to the door or door bell.

08/05/2008, 9:45 a.m. No answer.

08/07/2008, 10:30 a.m. Male co-resident said that Neil Luxenberg lived there but was not home and to try back after five p.m.

08/07/2008, 6:35 p.m. No answer at the door.

08/08/2008, 11:45 a.m. Richard Hudock, co-resident stated that Neil Luxenberg was not there.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Date 08/13/2008

Stephen T. Popovich

(TYPE OR PRINT NAME)

Stephen T. Spencer
(SIGNATURE OF DECLARANT)

(SIGNATURE OF DECLARANT)

☐ Attorney for ☐ Plaintiff ☐ Petitioner ☐ Defendant
☐ Respondent ☒ Other (*Specify*)

Process Server

Postage Transaction Record

Monday, August 11, 2008

Device ID: 062S0005156263
 Print Date: August 11, 2008 - 02:38:06 PM
 Mail Date: August 11, 2008
 User: snvps
 Customer ID: 1886424

Return Address: SOUTHERN NEVADA PROCESS SERVICE
 NEVADA LICENSE #662
 9017 S PECOS RD STE 4435
 HENDERSON NV 89074
 FORWARDING SERVICE REQUESTED

Delivery Address: NEIL LUXENBURG aka NEIL LAW
 4057 DELOS Dr
 LAS VEGAS NV 89103-2537

Weight: 0 lbs 7 oz

Refund Type: Mail-In

Cost:	Postage	
	Mail Class	\$1.85
	First-Class Mail®	
Total Cost:		\$1.85

EXHIBIT 2

John C. Brown

From: John C. Brown [jbrown@redbrownlaw.com]
Sent: Friday, January 16, 2009 2:37 PM
To: 'Rogers, John W.'; 'Gherini, John'; 'Micki.Singer@sdma.com'
Subject: j2 v. Blue Jay/Luxnberg; Luxenberg default

Neil Luxenberg is in default per FRCP 12a4A. As I discussed with John Rogers, j2 will request his default on 1/23 if he has not responded as of that date. j2 will then take a default judgment within a reasonable period of time as permitted by the federal and local rules. Please contact me immediately if you anticipate that Mr. Luxenberg will file a response. Thank you.

John C. Brown
Redenbacher & Brown, L.L.P.
580 California Street, Suite 1600
San Francisco, CA 94104
Telephone: 415-409-8600
Facsimile: 415-520-0141
jbrown@redbrownlaw.com
www.redbrownlaw.com

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